

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

United States of America,

Plaintiff

v.

Kejon Ward,

Defendant

Case No.: 2:17-cr-00221-JAD-EJY-2

**Order Denying Motion to Reduce Sentence
under Amendment 821**

[ECF No. 367]

Defendant Kejon Ward is serving a 94-month sentence for interference with commerce by robbery and possession of a firearm while committing the crime. Ward moves for a two-point reduction in his sentence based on recent changes to the sentencing guidelines, known commonly as Amendment 821, which authorize the removal of the extra criminal-history points known as “status points” that were added because the defendant committed the crime of conviction while under a criminal-justice sentence. But because the sentence that Ward received was already below the guidelines achieved by applying these guideline changes, I find that he is not eligible for a further sentence reduction and deny his motion.

Discussion

The Sentencing Commission submitted criminal-history amendments to Congress in May 2023, they took effect in November 2023, and courts may apply them retroactively beginning in February 2024.¹ In his pro se motion, Ward argues that he is eligible for a two-point reduction to his criminal-history points under Amendment 821’s provision related to status points, added to

¹ Sent’g Guidelines for U.S. Courts, 88 Fed. Reg. 60534, 60534 (Sept. 1, 2023).

the guidelines as § 4A1.1.² Status points are additional criminal-history points applied to a defendant who committed his crime of conviction while under another criminal-justice sentence. Because the Commission found that status points are less reliable indicators of rearrest, these changes allow courts to depend less on status points to determine criminal history.³ A defendant with seven or more criminal-history points may receive a one-point reduction in his status points, while a defendant with six or fewer criminal-history points may have his status points eliminated for committing his offenses while under a criminal-justice sentence.⁴

The sentencing court may reduce a defendant's sentence based on this status-points amendment if his "term of imprisonment [was] based on a sentencing range that has subsequently been lowered by the Sentencing Commission [under] 28 U.S.C. § 994(o) . . . after considering the factors set forth in section 3553(a) . . . if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."⁵ One such policy statement is found in U.S.S.G. § 1B1.10(b)(2)(A), which states that "the court shall not reduce the defendant's term of imprisonment" under this statute "to a term that is less than the minimum of the amended guideline range. . . ."⁶ So although the sentencing court may reduce a previously sentenced defendant's term of imprisonment based on Amendment 821, it can't do so if the defendant's original sentence was already below the new guideline range.

² ECF No. 367. Ward contends that the two-point reduction should be to his offense-level, but because § 4A1.1 only reduces status points, I construe his argument as seeking a reduction to his criminal-history points.

³ *Id.* at 60535–36; *see also* U.S. Sent'g Comm'n, *Revisiting Status Points* (2022), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220628_Status.pdf.

⁴ Sent'g Guidelines for U.S. Courts, 88 Fed. Reg. 60534, 60535 (Sept. 1, 2023).

⁵ 18 U.S.C. § 3582(c)(2) (cleaned up).

⁶ USSG § 1B1.10(b)(2)(A).

This is exactly the problem with Ward's request. He's right that § 4A1.1 eliminates the two criminal-history points that he acquired for committing his current offenses while under a criminal-justice sentence. But, as the Federal Public Defender appointed to represent Ward on this motion under this District's General Order 2023-9 tacitly acknowledges by her notice of non-eligibility,⁷ the sentence that Ward received was already well below the amended guideline range based on a variance. Ward received a sentence of 34 months for the interference-with-commerce-by-robbery count plus a mandatory consecutive statutory minimum 60 months for the possession-of-a-firearm-during-a-crime-of-violence count,⁸ for a total sentence of 94 months.⁹ That 94-month sentence was below the new guideline range achieved under Amendment 821, which is effectively 106–117 months:

Original guideline calculation	Level 22, Criminal History Category III
Original guideline range	51–63 months (+ 60 months)
New guideline range with two-point criminal-history score reduction under § 4A1.1	46–57 months (+ 60 months)
Original sentence	34 months (+ 60 months)

Because any further reduction would reduce Ward's term of imprisonment to one that is less than the minimum of the amended guideline range, I decline to award him a further sentence reduction.

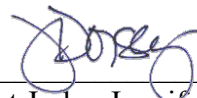
⁷ ECF No. 374 at 1.

⁸ 18 U.S.C. § 924(c)(A)(i)

⁹ ECF No. 357.

Conclusion

IT IS THEREFORE ORDERED that Kejon Ward's motion for a sentence reduction under Amendment 821 [ECF No. 367] is **DENIED** with prejudice.



U.S. District Judge Jennifer A. Dorsey